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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE 230th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 15 November 1995, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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The meeting was called to order at 10.20 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

1. The CHAIRMAN gave the floor to Mr. Burns to report on the meeting he and a few other members had had that morning with the High Commissioner for Human Rights.

2. Mr. BURNS reminded members that during the Committee's previous session, concern had been expressed regarding the support provided to the Committee in relation to communications. It had been thought that the efficiency of the Committee could be improved if additional material was made available to members when they came to discuss communications. In his address to the Committee the previous day, the High Commissioner had anticipated some of the Committee's concerns when he had indicated that resources would be made available to ensure the efficient consideration of communications addressed to the various committees. During that morning's meeting, the need for resources, the importance of maintaining professionalism in the Communications Branch and the requirement of continuity of historical memory, had been impressed upon the High Commissioner. He had appeared clearly to understand the situation and had assured the Committee members that one objective of the current reorganization of the Centre for Human Rights was to increase the efficiency of units such as the Communications Branch. He (Mr. Burns) had emphasized that the chief concern of members related to the organizational aspect and not to the work of particular individuals.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 3) (continued)

3. The CHAIRMAN noted that, as Senegal had announced it could not be present for the consideration of its report, it had been decided to discuss problems relating to States that had acceded to or ratified the Convention but had not yet submitted reports, with a view to taking possible action.

4. Mr. BRUNI (Secretary of the Committee), reviewing the current situation, said that as far as initial reports were concerned, there had been no change since earlier sessions. The initial reports due in 1988 from Togo and Uganda had not yet been received. At its seventh session the Committee had invited Togo and Uganda to submit their initial and second reports, due in 1992, in a single document. Following a request by the Government of Uganda for technical assistance in preparing reports, a government official from Uganda had participated in November 1994 in a course specifically aimed at training government officials in the reporting system. The course had been held at the ILO's International Training Centre in Turin. No response had been received from either Togo or Uganda to the 11 reminders sent to them.

5. On the question of inadequate reports, he referred to the case of Belize. Its initial report had been considered too brief and on 10 March 1994 the Committee had requested it to submit a more detailed report. Despite several reminders such a report had not yet been received.

6. Again concerning the submission of initial reports, he informed members that the report of Guyana, due in 1989, had not yet been received in spite of

nine reminders; the Committee had invited that State to submit both the initial and the second reports in a single document. The reports of Brazil and Guinea, due in 1990, had not yet been received in spite of seven or eight reminders; those States had also been invited to submit the initial and second reports in a single document. The reports of Malta and Somalia, due in 1991, had not been received; the Chairman had contacted the representative of Malta on that matter in November 1995. The reports of Croatia, Estonia, Venezuela, Yemen and Yugoslavia, due in 1992, had not yet been received; those States had been sent three reminders. The representative of the Government of Croatia had also attended the training course in Turin. The reports of Benin, Bosnia and Herzegovina, Cambodia, Cape Verde, Latvia and the Seychelles, due in 1993, had not yet been received, in spite of three reminders. The reports of Antigua and Barbuda, Burundi, Costa Rica, Slovakia and Slovenia, due in 1994, had not yet been received; four of those States had received a first reminder. Since the beginning of the cycle of submission of reports in June 1988, 84 initial reports had been due and 58 had been submitted; thus 26 were late.

7. As to second periodic reports, he informed members that the 12 reports due in 1992 were late and that four reminders had already been sent to the States concerned, which were Afghanistan, Austria, Belize, Bulgaria, Cameroon, France, Luxembourg, the Philippines, the Russian Federation, Togo, Uganda and Uruguay. The reports of China, Guyana, Peru, Tunisia and Turkey, due in 1993, had not yet been received. The reports of Algeria, Australia, Brazil, Guinea, Poland and Portugal, due in 1994, had not yet been received in spite of two or three reminders sent to each of those States. In total, since June 1988, 52 second periodic reports had been due and 23 had been submitted; thus 29 were late.

8. In relation to additional information, the Netherlands had sent the additional information requested by the Committee in April 1995. Neither Mexico nor Nepal had sent the additional information requested for May 1994 and April 1995 respectively. Other States parties that had not yet sent additional information requested by the Committee were Canada (requested in April 1993), Cyprus (November 1993), Italy (April 1995), Paraguay (November 1993) and Poland (November 1993). The Italian Mission had informed the secretariat that detailed additional information was expected to be submitted in the current month.

9. Fifteen States parties were over three years late in submitting their initial or periodic reports. In accordance with the relevant decisions of the Committee, it should address a letter to the Ministers for Foreign Affairs of those States to remind them of their reporting obligations.

10. Finland had presented its second periodic report in September 1995. Country Rapporteurs should be appointed to enable the Committee to consider that report at its following session.

11. Mr. SORENSEN informed members that a representative from Togo was currently participating in the training course on the reporting system in Turin and, to the best of his knowledge, a representative from Uganda was also participating. The standard of training provided would undoubtedly enable participants to prepare high-quality reports. The Committee should invite participants to put their knowledge to good use and submit reports quickly.

12. The initial report of Malta had been due in 1991. In future contacts with Malta it should be borne in mind that that country, following exchanges of information with the Council of Europe's Committee for the Prevention of Torture, had gained experience in writing and replying to reports that could help it to fulfil its reporting obligations under the Convention.

13. He was concerned about the fact that additional information forwarded to the Committee was rarely dealt with. Such additional information should be made available to one of the country rapporteurs who should be responsible for reading it, preparing a reply and presenting it to the Committee.

14. Mr. BURNS said he wished to address the problem of States failing to submit reports, and in particular initial reports. Although the problem had become apparent as early as the Committee's third year, it had not been addressed owing to the need to cooperate with States and to encourage them in turn to cooperate with the Committee. As Mr. Gil Lavedra had pointed out, however, some States had fallen so far behind that there was serious doubt about whether they had any intention of cooperating with the Committee. If the Committee continued merely to write diplomatic letters to various chancelleries, it was unlikely to achieve its desired results, results that under the terms of the Convention were obligatory.

15. What was the solution? Various views had been aired. At least one member had suggested using whatever material was available to draw conclusions in the Committee's annual report. As members could never be sure they had the appropriate material before them, and as that approach was a highly confrontational one, he did not consider it to be the best possible solution.

16. Mr. Gil Lavedra had suggested an interesting compromise. After informing all States of its intention, the Committee could declare in its annual report that, in its view, certain States were in breach of the Convention pursuant to their obligations under article 19, paragraph 1. He considered that to be the most effective course of action for the Committee. That statement would result in a certain amount of embarrassment for the States concerned as the world community's attention would be drawn to the fact that they were not meeting their commitments under the Convention, but the Committee would not be creating a confrontational situation requiring a specific response from the States, except for the preparation of their reports. If a State was in breach of the terms of the Convention, the Committee had the inherent jurisdiction to draw the attention of other member States to that breach. It would have to decide after what time-limit such action would apply for, as Mr. Sorensen had pointed out, some States did not have many resources or much experience in that area and they should be given the time and opportunity to meet their obligations. He suggested three years as being a reasonable period, but invited other members to express their views.

17. Mr. GIL LAVEDRA suggested as a possible course of action the issuing of a general observation in keeping with the practice of other committees which wished to make known their opinions with respect to specific articles of conventions or treaties. A general observation on reporting obligations, drafted in forceful terms and stating that the Committee considered the non-submission of reports to be a flagrant form of non-compliance with the Convention, could be included in the annual report. States freely assumed

certain obligations under the Convention, and non-compliance with reporting obligations constituted an infringement of its provisions. A State that simply confined itself to signing the Convention and did not fulfil the primary obligation of submitting reports on its implementation of the Convention was adopting a hypocritical attitude. A chapter of the annual report could be set aside to indicate which States were not complying with that primary obligation. States would be advised of the new procedure and a reasonable and practical time-limit would be set. Another measure he had contemplated but had discarded as being too extreme had involved setting a time-limit for the acceptance of replies, but under the Convention the Committee was bound to receive reports at any time.

18. The CHAIRMAN asked whether the general observation would be directed at each State individually or would relate to all States.

19. Mr. GIL LAVEDRA replied that the general observation to be included in the Committee's annual report would relate to the reporting obligations of all States. In it the Committee would state its view that the submission of reports was the principal obligation of States that acceded to the Convention. The States that were not complying with that obligation would then be listed.

20. Mr. SORENSEN said that the suggestions made by Mr. Burns and Mr. Gil Lavedra were excellent; it would be a good idea to start with a general statement, expressing the Committee's concern about overdue reports. The general statement should also explain how the Committee had tried to help States parties write their reports, through the Technical Assistance Branch of the Centre for Human Rights.

21. Mrs. ILIOPOULOS-STRANGAS agreed. Since the Convention did not provide for the Committee's right to take such actions, however, the Committee could base itself on article 26 of the Vienna Convention on the Law of Treaties, whereby "Every treaty in force is binding upon the parties to it and must be performed by them in good faith". The Committee in that instance felt that the States parties concerned were not in good faith when they did not comply with their reporting obligations under the Convention, which were crucial to its functioning.

22. Mr. EL IBRASHI considered that there were many loopholes in the Convention; the only solution was that proposed by Mr. Gil Lavedra and Mrs. Iliopoulos-Strangas. In practice, States parties that abided by the rules were worse off than those that did not respond to the Committee's appeals. There were frequently numerous violations in the latter States. However, if States did submit reports, they would be subject to the Committee's observations, as Denmark had been, even though it was a pioneer in the field of human rights. Similarly with regard to articles 20 to 22 of the Convention, those States parties that had entered reservations were in a better position than States parties that had not. The proposed solution was the only practicable one, but was still not satisfactory. He asked what the situation was with other human rights conventions and the initial reports of States parties, and what action the various committees had taken.

23. Mr. SLIM said that the current situation was untenable: if it continued, there would be an ever longer list of States parties that were not complying

with the Convention and a shorter list of those complying. What reason did States parties have for complying when they saw how many States parties did not comply? It was becoming increasingly difficult to implement the Convention. A State party might ask itself why it should submit a report and find itself accused of violations; it was better just to be reprimanded for failure to submit a report. One solution might be to impose moral sanctions on the State party, or to refer to the Vienna Convention. There was also the question of the equality of States parties in their compliance with their international obligations.

24. The proposed solution might not, however, be practicable. He wondered whether the Convention against Torture was not one of the humanitarian treaties designated by the Vienna Convention as constituting jus cogens. In the case of such treaties, suspension by some States parties of compliance with their obligations did not authorize other States to follow suit. Could the Committee not include a strongly worded general observation in its report, along with two lists, one of those States parties complying with their obligations and the other of those not complying? Would that not encourage States parties to respond to the Committee's requests for compliance? In any event, an ideal legal solution did not exist; rather, the Committee must find something that would prompt States to comply, especially with regard to their initial reports.

25. Mrs. ILIOPOULOS-STRANGAS said that she agreed in principle, but the Committee must expressly draw attention to a State party's non-compliance with the Convention against Torture in the context of the Vienna Convention. That would give the Committee two bases on which to reprimand the States parties, legal and psychological.

26. Mr. GIL LAVEDRA said it was wrong to think that States parties simply had two types of obligations - external, vis-à-vis the international community, and internal, reflected in the extent to which human rights were respected within that State. Different States fulfilled their obligations in varying degrees: those that acceded to the Convention were in a better position than those that did not; those that acceded but did not submit reports were in a better position than those that acceded but also entered reservations, and so on.

27. Mr. EL IBRASHI said that Mr. Gil Lavedra had perhaps misunderstood the distinction he had been trying to make between States that acceded to the Convention and those that did not. Obviously, those that did accede were in a better position. The question was to distinguish, from a practical viewpoint, between States parties that submitted their reports on time but received comments from the Committee, and those that did not submit their reports at all. He agreed with Mrs. Iliopoulos-Strangas' idea of two lists, but the most the Committee could say was that certain States parties, by acceding to the Convention in the first place, had in fact expressed their political will but had not submitted a report. From a legal standpoint, States parties that submitted their reports were in a better position, but not from a practical standpoint. The same argument applied to reservations: from a legal standpoint, States parties making no reservations were in a better position, but in practical terms they were worse off.

28. Mr. SORENSEN said that it was not a question of States parties trying to trick the Committee by signing the Convention and then not submitting their reports. States such as Uganda, Togo, Guyana, Brazil and Guinea, which had submitted neither their initial report nor their second report, all adhered to article 20 none the less. It was important that the Committee should begin to take action. If it received well-founded allegations of torture in those States, it would still be able to initiate inquiries. As to article 21, a State party might recognize the competence of the Committee to receive communications regarding another State party. That article might be of value to the Committee in the present instance, i.e. a State party could report the breach by another State party of its reporting obligations under article 19. The Committee should proceed along the lines suggested at its previous meeting.

29. Mr. SLIM said that he did not fully agree with Mr. Gil Lavedra's analysis. Another point, which had already been raised by many members, should also be considered: according to his calculations, some 37 States parties, or about 45 per cent, had not submitted their initial report. That was an alarming situation. Those States had not only failed to comply with their obligations under the Convention, but also were perhaps not making the requisite changes to legislative and administrative measures to incorporate the Convention into their domestic law. In fact, many States probably did not submit an initial report precisely because they had not been fulfilling their obligations under the Convention. He had more sympathy with States which submitted their reports more or less on time and were making an effort, albeit insufficient, to bring their legislation into line with the Convention than with States which did not even meet their basic reporting obligations.

30. Mr. EL IBRASHI said that Mr. Slim's point was well taken: the figure of 37 defaulting States parties was shocking. He proposed that the Committee should invite the representatives of those 37 States to attend a meeting of the Committee. Although some might be reluctant to do so because they had not been fulfilling their obligations, it was important to explain to them that the Committee's purpose was not to condemn them, but to assist them in complying with the Convention.

31. Mr. BURNS said that the Committee was limited by the Convention and the relevant provisions of the Vienna Convention on the Law of Treaties. He supported the proposal made by Mr. Gil Lavedra and Mrs. Iliopoulos-Strangas, which, although not perfect, represented a step forward; in any event, that was all the Committee could do at the current stage.

32. Mr. GIL LAVEDRA took issue with the figures cited by Mr. Slim on the number of States parties that had not submitted an initial report. According to the annotated agenda (CAT/C/31), of the 91 States parties to the Convention, *26 had not submitted an initial report. That worked out at only* 30 per cent, not 45 per cent. What was more, that figure of 30 per cent consisted largely of overdue reports that could hardly be considered excessively late: three due in 1995, five in 1994, six in 1993 and five in 1992. The initial reports of only 8 per cent of all States parties were long

overdue, i.e. four years or more: (two due in 1991, two in 1990, one in 1989 and two in 1988). The figure of 8 per cent for initial reports overdue by four years or more could not be considered high.

33. The CHAIRMAN said that the problem existed and required a solution, regardless of the exact figures.

34. Mrs. ILIOPOULOS-STRANGAS proposed the inclusion of an observation in the Committee's report that the limit for an overdue periodic report was four years, after which the Committee could then find that a given State party was in breach of the Convention.

35. The CHAIRMAN asked Mrs. Iliopoulos-Strangas and Mr. Slim to draft an observation to that effect.

36. Mr. BRUNI (Secretary of the Committee) described the practice of two other committees in respect of overdue reports. The Committee on the Elimination of Racial Discrimination proceeded with the consideration of the situation of States parties whose second periodic report was long overdue but which had already submitted an initial report. The Committee on Economic, Social and Cultural Rights did so with States parties whose initial report had not been submitted for 10, 12 or even more years; that had been the case with the Gambia, Kenya, Lebanon, Mali and Mauritius. Other States which had never submitted an initial report had been warned that their situation would be considered without a report and had responded by producing one.

37. Annex III of the Committee's report (A/50/44) already gave the following information on the status of submission of reports of States parties: date of entry into force; initial report, date due; date of submission; and document symbol. Furthermore, in paragraph 31 of the report, the Committee had explicitly deplored the fact that the initial reports of Brazil, Guinea, Guyana, Togo and Uganda were more than four or five years overdue and that, in spite of several reminders sent by the Secretary-General, those States parties had continued not to comply with the obligations they had freely assumed under the Convention. A similarly worded passage had been contained in reports for the past three or four years.

38. The CHAIRMAN, said that, as he saw it, there was agreement on a need to use stronger language. It might also be useful to set a time-limit for overdue reports, after which the Committee would send the name of the State concerned to the Secretary-General so that he might approach the Government directly and urge it to comply with its obligations.

39. Mr. SLIM endorsed the Chairman's suggestion. Could not the Chairman also raise the issue of long overdue initial reports at the press conference, without naming names but stressing the Committee's concern?

40. Mrs. ILIOPOULOS-STRANGAS proposed that a provision should be incorporated in the rules of procedure stating that, when an initial report was more than four years overdue, the situation in the State concerned would be considered without a report. The Committee had already enlarged the scope of application of the Convention; under article 22, for example, not only the victim but also

family members and close friends could submit communications. By establishing a deadline of four years, the Committee would put more pressure on States parties to fulfil their obligations. She could not endorse the practice of deciding on a case-by-case basis, as mentioned by Mr. Bruni. Legal certainty was of the essence.

41. Mr. SORENSEN suggested that the Committee should seek advice from the Secretary-General on how to proceed once an initial report was more than 10 years overdue. He further proposed that, when additional information requested from States was received, it should be forwarded to the country rapporteur, who could then communicate it to the Committee.

42. Mr. EL IBRASHI said that he agreed with Mr. Sorensen's proposal concerning the submission of additional information, but could not support his suggestion to request advice from the Secretary-General. The members of the Committee were themselves experts and did not need to solicit advice.

43. Mrs. ILIOPOULOS-STRANGAS also opposed approaching the Secretary-General and inquired whether other committees did so in similar circumstances. As she saw it, the time to act was now. In 1996, the Committee would have many new members, who would need time to accustom themselves to its methods of work. The question had been with the Committee for years. Instead of waiting to see how others proceeded, the Committee should decide to change the rules of procedure; that would have a maximum effect.

44. Mr. BRUNI (Secretary of the Committee), replying to points raised, said that other committees sent out reminders similar to those transmitted by the Committee against Torture. They were in the form of notes verbales to the Government concerned from the Secretary-General, pursuant to decisions of the committee under its rules of procedure. The opinion of the Secretary-General was not sought. However, whenever the Secretary-General or the High Commissioner for Human Rights went on mission, they were given a fact-sheet on the country or countries to be visited, indicating the problems to be taken into account and including basic human rights information. That information covered status with regard to ratification of treaties, the status of reports, and the concluding observations of the various human rights committees on any reports which had been submitted. There was therefore a continuing process of action and dialogue.

45. With regard to the four-year limit proposed by Mrs. Iliopoulos-Strangas, it might be useful for the Committee to bear in mind that by the middle of 1996 there would be 27 States which had not submitted initial reports. A list of those States could be provided; some reports were held up for bureaucratic reasons and others because the country did not wish or intend to report.

46. With regard to the transmission to Committee members of additional information received by the secretariat, he recalled that the detailed reply sent by Switzerland in response to allegations made by different organizations had, at the request of the Committee and the Swiss Government, been forwarded to the two country rapporteurs, Mr. Ben Ammar, who had resigned, and

Mr. Lorenzo, who had been unable to participate in recent meetings. The Committee had consequently not been as well informed as it might have been. The secretariat would try to continue to inform country rapporteurs in the future.

47. The CHAIRMAN suggested that a working group, composed of Mrs. Iliopoulos-Strangas and Mr. Slim, should submit a text to the Committee for consideration in the afternoon of 22 November.

48. It was so agreed.

AMENDMENTS TO THE RULES OF PROCEDURE OF THE COMMITTEE (agenda item 7) (CAT/C/XV/Misc.3)

49. Mr. BRUNI (Secretary of the Committee), introducing document CAT/C/XV/Misc.3, said that in the course of the Committee's discussions at recent sessions it had been stated that when a number of issues suggested that the rules of procedure should be amended, the secretariat should provide an updated paper with proposals for improving the rules of procedure and hence the Committee's working methods. Some new provisions concerning article 22 had already been adopted at the Committee's fourteenth session and had been included in its most recent report (A/50/44). The document now before the Committee contained the Committee's comments on certain issues and the secretariat's proposed amendments. He invited the Committee to consider the proposed new paragraph 2 of rule 17.

50. Mr. BURNS considered that the words "at the latest" at the end of the paragraph were redundant. The Chairman should simply report to the Committee at the following session.

51. Mr. GIL LAVEDRA disagreed. The Chairman should pass on the information either immediately - by letter, telephone or fax, or at the following session at the latest.

52. Mr. SLIM suggested that, in view of the possibility that the Committee might repudiate the action taken by the Chairman, the word "provisional" should be inserted before "action" in the first sentence.

53. Mr. SORENSEN disagreed with that suggestion. The Chairman needed to be able to take a firm decision, in accordance with the Convention, in order to give a country a clear answer. If the Committee subsequently found that the Chairman had not acted correctly, it could elect a new Chairman.

54. Mrs. ILIOPOULOS-STRANGAS pointed out that the Chairman must be able to act firmly in an emergency situation where the usual rules did not apply. In such a case, the Committee would have to accept his decision as final.

55. Mr. SLIM maintained that, according to the Convention, it was the Committee and not the Chairman which took decisions. However, the Chairman was required in inter-sessional periods to deal with current matters, in the course of which he might be required to take an urgent decision. If the Committee wished to comply precisely with the Convention, therefore, the

Chairman would only be able to take provisional action at such a time, unless he first consulted the other members of the Committee and obtained their endorsement.

56. Mr. EL IBRASHI said that consultations should not be necessary in an emergency situation. The Chairman must be authorized by the Committee to act during inter-sessional periods when there was no possibility of a meeting. Any decision he took would be a Committee decision, which the Committee could not go back on at a later stage.

57. Mr. SORENSEN fully agreed with that view. The Committee had already given the country rapporteurs powers to act, take decisions and report back to the Committee later; it would be absurd if it could not give its Chairman a similar mandate.

58. Mr. SLIM said that if the Committee was to give the Chairman carte blanche to deal with current affairs during the inter-sessional period, then the Chairman should inform the Committee of the action taken, which would automatically have been endorsed by the Committee. If the Chairman was not to be so authorized, he could only take provisional measures and then report to the Committee, which would confirm or reject the decision as appropriate. He therefore suggested that the words "shall report ... Committee" in the last sentence should be replaced by "shall inform the Committee of the action taken".

59. Mr. BURNS said that the Committee could quite clearly delegate functions to members during the inter-sessional period in order to keep the Committee effective. It had already set a precedent by empowering the country rapporteurs and he saw no reason why the Chairman should not have the same authority. However, the amendment proposed by Mr. Slim was of no significance in English.

60. Mr. SLIM accordingly proposed that in the French text the word "autorisé" should be replaced by "habilité" and that the words "rend compte au Comité" be replaced by "inform le Comité".

61. It was so decided.

The meeting rose at 1 p.m.